

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on January 22, 2003 at 8:00 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 243, 1/14/2003; HB 246,  
1/14/2003; HB 255, 1/14/2003;  
HB 240, 1/14/2003  
Executive Action: HB 234; HB 134

**HEARING ON HB 243**

**Sponsor:** REP. CHRISTOPHER HARRIS, HD 30, Bozeman

**Opening Statement by Sponsor:**

**REP. HARRIS** opened on HB 243. He explained that this bill addresses an old, 1895, statute addressing dueling between cowboys. The dueling statute states that if you kill someone in a duel, you pick up their debt and support their family. He explained how the old statute could be applied to drunk driving. He stressed that it stands as a warning; that it would be posted in public places to warn people that drunk driving will not be tolerated.

***{Tape: 1; Side: A; Approx. Time Counter: 1 - 46}***

**Proponents' Testimony:**

**Al Smith, Montana Trial Lawyers Association**, supported HB 243, stating it would make the offense of drunk driving, resulting in the death of another, a strict liability offense. He voiced his concern that HB 243 may conflict with Gary Marbut's bill which states that dueling is a recreational activity.

***{Tape: 1; Side: A; Approx. Time Counter: 47 - 60}***

**Mike Barrett, poet**, supported HB 243.

**Opponents' Testimony:**

**Greg VanHorsen, State Farm Insurance Company**, opposed HB 243. He expressed his concern that this bill would expand liability and would require a modification of insurance policies. He stated that this bill appears to allow for double recovery.

***{Tape: 1; Side: A; Approx. Time Counter: 46 - 124}***

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**REP. MALCOLM** asked Mr. VanHorsen what effect this would have on insurance rates. **Mr. VanHorsen** said that he was not an insurance agent, but that it could have a significant impact. **CHAIRMAN SHOCKLEY** asked REP. HARRIS about double indemnity and preemption of a civil remedy. He expressed his concern about double

recovery. **REP. HARRIS** said that he doesn't see the issue of double recovery. He explained that this bill would create a floor and anything above that floor, which is not double recovery, would be allowed. He said that if an amendment is needed to make that clear, he'd be open to that. **REP. NOENNIG** shared the same concern regarding wrongful death in that the surviving spouse would get loss of income and loss of consortium. He emphasized that this recovery is already covered in the law. **REP. HARRIS** said that picking up the debt is not new, but really an old, remedy. He explained the bill's intent is to send a strong message that when you kill or maim someone, you must pay for the damages. **REP. NOENNIG** questioned whether the offender would have to pay the survivor's mortgage and car payments. **REP. HARRIS** responded that it would cover the basic necessities of life. He stated that this bill is important in terms of its effect, as well as to send a message.

*{Tape: 1; Side: A; Approx. Time Counter: 125 - 222}*

**REP. LASZLOFFY** asked why it would be limited to DUI and not to other instances of wrongful death. **REP. HARRIS** responded that DUI is the target and they want to send a strong message to drunk drivers. **REP. LASZLOFFY** argued that the injury is still the same.

*{Tape: 1; Side: A; Approx. Time Counter: 223 - 250}*

**CHAIRMAN SHOCKLEY** stated that people consent to engage in dueling, whereas nobody consents to getting run over by a drunk driver. He noted the arguments are not linear. **REP. HARRIS** argued that drunk driving, like dueling, is completely unnecessary and those who engage in either risk harming others.

*{Tape: 1; Side: A; Approx. Time Counter: 239 - 269}*

**REP. STOKER** asked Al Smith about the effect of strict liability. **Mr. Smith** responded that in strict liability, the survivor would not have to prove intent, just damages. He explained that liability would be established. He stated that most people are insured for \$25,000 to \$100,000, but that DUI victims rarely get compensated from insurance. This bill would help victims receive lifetime compensation.

*{Tape: 1; Side: A; Approx. Time Counter: 270 - 302}*

**Closing by Sponsor:**

**REP. HARRIS** said that this worked for dueling and will work for drunk driving. He explained that this is one more way to put an end to drunk driving.

***{Tape: 1; Side: A; Approx. Time Counter: 303 - 404}***

**HEARING ON HB 246**

**Sponsor:** **REP. CHRISTOPHER HARRIS, HD 30, Bozeman**

**Opening Statement by Sponsor:**

**REP. HARRIS** opened on HB 246. He explained that in Miranda v. Arizona, the U.S. Supreme Court held that law enforcement cannot coerce a confession or put a suspect in an incriminating situation. He stated that this bill would clarify, in statute, when Miranda should be given. He posed that the bill's purpose is not to alter any present practices, but to make it clear to all, that miranda must be given when there is custody and interrogation.

***{Tape: 1; Side: A; Approx. Time Counter: 405 - 414}***

**Proponents' Testimony:**

**Scott Crichton, Executive Director ACLU of Montana**, supported HB 246. He stated that the criminal defense bar should be in the loop on this bill. He stressed that he appears on behalf of the ACLU which defends the Bill of Rights. He stressed that due process is an important issue which this bill would address. He explained that it is important in this stage of history to not assume any of the protections we have by the Bill of Rights. He stressed a number of our rights are presently under attack at the federal level in the name of national security. He stated that it is important for Montana to maintain it's sovereignty, clarity of process in law, and stay true to principles embedded in the Montana Constitution. He encouraged a do pass.

***{Tape: 1; Side: A; Approx. Time Counter: 415 - 447}***

**Opponents' Testimony:**

**Marty Lambert, Montana County Attorneys' Association**, opposed HB 246. He explained that in order for Miranda to be triggered, there must be custody and interrogation. He explained that the

sponsor is attempting to clarify the language, but the terms "custody" and "interrogation" are the subjects of volumes of court decisions. He stated that a person in custody would believe they are not free to leave. He gave the example of the Christian Burial Case. He explained the two officers, in that case, were transporting a suspect from one city to another. During the long drive, the officers had a conversation in the front seat stating that it would be nice to find the victim so her family could give her a decent Christian burial. The suspect then told the officers where the girl was buried. The U.S. Supreme Court held that the officer's conversation was enough to trigger Miranda.

**Mr. Lambert** explained that this is not a due process issue and that there is a lot of litigation in this area. He posed that this is an area for the courts to decide; for the defense bar, and the prosecutors to weigh in on. He stated that even with the amendments, he strongly opposed the bill.

***{Tape: 1; Side: A; Approx. Time Counter: 447 - 501}***

**Mr. Lambert** argued that Miranda v. Arizona stated specifically that the Miranda warning is not constitutionally compelled. He explained that the Fifth Amendment to the U.S. Constitution, protecting one from self incrimination, did not compel that result. He posed that Miranda resulted in a policy rule adopted in a 5-4 decision by the U.S. Supreme Court in 1966. He argued against the proposition that Miranda is about due process or of Constitutional importance. He stated that this is an area in which the Legislature should not be involved.

***{Tape: 1; Side: B; Approx. Time Counter: 1 - 32}***

**Informational Testimony:**

**John Connor, Assistant Attorney General, Department of Justice (DOJ)**, stated that the best approach would be to allow the courts to decide. He explained that the issue of interrogation has been litigated at length. He explained that a person can be arrested and not be in custody, from the perspective of giving a Miranda warning. He also stated you can be in a custodial situation, where you are being questioned, and not be under arrest. He stated the DOJ has no problem with putting Miranda into statute. He stated that if the Committee passed HB 246, the DOJ would have no problem with it.

***{Tape: 1; Side: B; Approx. Time Counter: 33 - 63}***

**Questions from Committee Members and Responses:**

**CHAIRMAN SHOCKLEY** asked REP. HARRIS if this bill codifies existing Montana Supreme Court law and U.S. Supreme Court law.

**REP. HARRIS** affirmed it would.

**Closing by Sponsor:**

**REP. HARRIS** closed on HB 246. He stated he agreed with Mr. Lambert's concern that custody and interrogation are highly litigated areas. He emphasized that nothing in HB 246 would interfere with litigation. He felt it is time to clarify Miranda on the books what the requirements are.

*{Tape: 1; Side: B; Approx. Time Counter: 64 - 69}*

**HEARING ON HB 255**

**Sponsor:** REP. JILL COHENOUR, HD 51, East Helena

**Opening Statement by Sponsor:**

**REP. COHENOUR** opened on HB 255, stating that it clarifies the language and adds a new \$100 surcharge for a DUI conviction. She stated that this bill would exempt a person unable to pay the surcharge. She posed that this bill is good for law enforcement, including the campus police. She added that she would like the bill amended to allow extra funds to be forwarded to the arresting law enforcement agency. She explained that this would assist them with education, training, and equipment. She stated that this bill would help to crack down on drunk driving, and assist law enforcement programs.

*{Tape: 1; Side: B; Approx. Time Counter: 70 - 152}*

**Proponents' Testimony:**

**Don Hargrove, Montana Addictive Services Providers**, spoke in favor of HB 255. He stated that the surcharge would hit offenders in the pocketbook and act as a deterrent. He felt that this bill is direct and simple. He urged a do pass.

**Mona Jamison, Boyd Andrew Community Services**, strongly supported HB 255. She suggested that the higher the penalty, the more law abiding people would be. She emphasized that the money would help educate the youth and send a strong message against drunk driving.

*{Tape: 1; Side: B; Approx. Time Counter: 153 - 205}*

**Kristi Blazer, Attorney, Rimrock Foundation, Montana Beer and Wine Wholesalers Association,** stood in support of HB 255.

*{Tape: 1; Side: B; Approx. Time Counter: 206 - 215}*

**Opponents' Testimony:**

**Robert Throssell, Montana Magistrates Association, and Judges of Courts of Limited Jurisdiction, City, Municipal, and Justices of the Peace (JP),** opposed HB 255. He stressed that the courts deal daily with the DUI problem and that they sympathize with the proponents of the bill. He stated he opposes the continual adding of surcharges. He expressed that this is not the best way to fund needed services. He emphasized that courts are very overloaded and this bill would add another burden to them. He pleaded that the Committee not put them in the position of having to balance the surcharges, and to weigh them and administer them. He asked that the Committee allow the court to do its job, imposing levies and administering fines provided in law.

*{Tape: 1; Side: B; Approx. Time Counter: 216 - 295}*

**Informational Testimony:**

**Jim Smith, Montana Sheriffs and Peace Officers Association,** spoke highly of the intent of the bill, but questioned the increased surcharge. He said this bill has big implications. He expressed that maybe the \$100 could be identified as a driver's license reinstatement fee which would take it out of the Courts of Limited Jurisdiction. He felt this would keep Magistrates from having to act as accountants. He said it's a good bill, but their support still is behind HB 124.

*{Tape: 1; Side: B; Approx. Time Counter: 296 - 345}*

**Questions from Committee Members and Responses:**

**REP. PARKER** asked whether this bill would potentially create an opportunity for a defense council to attack the DUI investigation and jeopardize the prosecution. **Mr. Lambert** responded that the issues are already there; that it comes down to the officer's credibility. He said the jury sometimes takes the stance of, "To a hammer, everything's a nail." He said the good prosecutor should prepare the officer to withstand that type of cross-examination and convince the jury that those issues are just a "smokescreen."

***{Tape: 1; Side: B; Approx. Time Counter: 346 - 410}***

**REP. RICE** asked **REP. COHENOUR** about exempting the defendant from paying the surcharge and posed that many people would qualify.

**REP. COHENOUR** responded that third and fourth DUI offenders are usually indigent and would most likely be exempt from paying the surcharge.

***{Tape: 1; Side: B; Approx. Time Counter: 411 - 458}***

**REP. EVERETT** stated that he has no problem with money for equipment and training, but he has a question regarding the education portion; whether DARE is truly successful. He asked for some statistics showing the success. **REP. COHENOUR** said she did not have that information but would get it. She also stated her belief that education does have a positive effect. She explained that law enforcement has a community activities fund which is used to educate youth about the harmful effects of substance abuse.

***{Tape: 1; Side: B; Approx. Time Counter: 459 - 510}***

**REP. SALES** asked about fines. He stated that if the purpose is to send a tough message, then there should not be an exemption for people who are financially strapped. **REP. COHENOUR** stated that they don't want to create a situation where the offender's family would suffer. She said that the judge has the discretion to make that call.

***{Tape: 2; Side: A; Approx. Time Counter: 1 - 8}***

**CHAIRMAN SHOCKLEY** asked about the order of the fines. He said that there is no reason why law enforcement should be ahead of everyone else. He asked about the amendment directing funds to the law enforcement agency involved, and requested she speak with Mr. MacMaster on that issue.

***{Tape: 2; Side: A; Approx. Time Counter: 9 - 25}***

**Closing by Sponsor:**

**REP. COHENOUR** closed on HB 255. She stated that Mona Jamison stated the cause very eloquently; that this bill is about stopping drunk driving.

**HEARING ON HB 240**

**Sponsor: CHAIRMAN JIM SHOCKLEY, HD 61**



**Opening Statement by Sponsor:**

**CHAIRMAN SHOCKLEY** opened on HB 240. He explained that when a person is convicted, they cannot go to prison until the judge signs the judgment. He stated once the sheriff gets the judgment, they may transport the defendant to the Montana State Prison, or other designated place. He stated that prisoners often languish, at great expense to the county, in the local jail. He stated the fee to keep someone in the jail is about \$50 a day. So this bill allows the sheriff to transport the defendant immediately without waiting for a signed judgment. He explained that the Department of Corrections (DOC) has refused to pay the counties for incarcerating DOC prisoners. This bill would fix that and require the DOC to reimburse the counties.

***{Tape: 2; Side: A; Approx. Time Counter: 26 - 85}***

**Proponents' Testimony:**

**Marty Lambert, Gallatin County Attorney**, supported HB 240. He stated that leaving convicted persons sitting in jail is costly. He explained it would be beneficial to move defendants to their destination as soon as possible. He felt that requiring written judgement, within 30 days after the oral pronouncement, is a good idea.

***{Tape: 2; Side: A; Approx. Time Counter: 86 - 147}***

**Opponents' Testimony:** None.

**Informational Testimony:**

**Fred Van Valkenburg, County Attorney, Missoula**, testified that courts, not county attorneys, should prepare the judgements. He explained that it should be a judicial, and not an executive, function. If this were made a judicial function, there could be adequate staff for implementation.

***{Tape: 2; Side: A; Approx. Time Counter: 148 - 235}***

**Diana Koch, Chief Legal Council, Department of Corrections (DOC)**, said that the DOC has grappled with this problem for several years. It has a monetary foundation because 1.5 years ago an Attorney General opined that as soon as judgement is passed, the DOC must pay the costs to house the defendant. She stated that the DOC has the incentive to get the person out of jail and into cheaper custody. She explained that historically, moving defendants out before the certified court judgement came, caused havoc. She explained that DOC sat down to see if it could get a

different system worked out. She emphasized that the question was how the DOC could get the certified judgment from the judge. She felt that Marty Lambert's form (Lambert Form) would be a good solution. She stated that it would allow the DOC to provide it to the judge, the judge would sign it, and the prisoner would have it when transported to prison.

***{Tape: 2; Side: A; Approx. Time Counter: 236 - 336}***

**Questions from Committee Members and Responses:**

**REP. PARKER** had a concern about transforming sheriffs' functions into that of a scribe when the process has been a judicial function. **CHAIRMAN SHOCKLEY** replied that this gives the sheriff control over his population. He said he wants to get the sheriff out of the loop. The county attorney or judge can work out who will do the judgement and they would have 30 days to do it. He stressed that this would free up the sheriff. This bill benefits the sheriff and DOC and doesn't adversely affect the county attorneys or judges. He said that the period could even be extended to 60 or 90 days if this would be a benefit. He emphasized that there is no downside to this bill except to judges if they don't think they can get it signed within 30 days.

***{Tape: 2; Side: A; Approx. Time Counter: 337 - 397}***

**REP. HARRIS** brought up the point with **CHAIRMAN SHOCKLEY** about the pronouncement of judgement. **CHAIRMAN SHOCKLEY** explained that what really counts is the judge's oral pronouncement. He explained that if there was a conflict between the oral and the written judgment, the oral judgment would rule.

***{Tape: 2; Side: A; Approx. Time Counter: 398 - 441}***

**REP. HARRIS** then asked Ms. Koch regarding the cost to DOC and taxpayers. He asked if there are any revisions. **Ms. Koch** responded there aren't any revisions, but she could get them.

**REP. NOENNIG** asked about oral pronouncements and the sheriff delivering the letter of sentence to the prison. **Ms. Koch** said they would like to amend the bill to clear it up. **CHAIRMAN SHOCKLEY** responded that oral pronouncements are simple; that Mr. Lambert's form would make it simple; that the sheriff could sit in court, check the box, write in the fine, and no problem.

**REP. HARRIS** asked Ms. Koch if she had seen the form. She replied that they had, and they like it. He asked if it would be a good idea to put the Lambert form into state law. **Ms. Koch** replied that it would be good. **REP. HARRIS** asked if it matters who fills

out the form. **Ms. Koch** said it doesn't matter, just as long as the judge signs it.

**{Tape: 2; Side: B; Approx. Time Counter: 1 - 51}**

**REP. NEWMAN** asked Mr. Lambert if there is a benefit in having the court issue the order as opposed to the county attorney. **Mr. Lambert** replied that the court should fill out the form. He said that judges in the State of Washington do the judgements at the time of oral pronouncement. **REP. NEWMAN** asked if courts use this process in other contexts such as mental health. For instance, if the person is declared mentally unhealthy they are immediately committed and go to a state hospital. **Mr. Lambert** replied that courts do use the process in that situation because time would be critical as the person has to get to Warm Springs.

**REP. NEWMAN** asked about the difference between a judgement and the sentencing order. **Mr. Lambert** explained that a judgement is a written pronouncement, and can be enforced. **REP. NEWMAN** asked if a written judgement includes not only the sentencing order, but also the reasoning, recommendations to DOC, summary of victim's impact, etc. **Mr. Lambert** said there is a separate reasons for sentence section that is not currently included in this form because the judge takes care of that. It could possibly be included.

**{Tape: 2; Side: B; Approx. Time Counter: 52 - 128}**

**REP. PARKER** suggested that county attorneys draft the judgments. **Mr. Van Valkenburg** responded that would not be feasible due to the volume of their work load. He stated that on a typical law and motion day in Missoula, it's normal for him to hear 50-80 criminal cases, with ten of those being sentenced. He emphasized that there are many factors which go into the judgment such as calculating time served and victim restitution. He stated that calculating these poses huge logistical challenges.

**{Tape: 2; Side: B; Approx. Time Counter: 129 - 142}**

**REP. HARRIS** asked about the Lambert Form and Mr. VanValkenberg's concerns. **Mr. Lambert** explained that a sentence deals with multiple counts. The form is meant to be inclusive, but the restitution is a portion that is very complex. **REP. HARRIS** questioned if they can waive the restitution element. **Mr. Lambert** replied they could.

**REP. STOKER** observed that it's a simple bill to remove detainees from local jails. **CHAIRMAN SHOCKLEY** responded that is true; that it would give the sheriff control over his jail.

*{Tape: 2; Side: B; Approx. Time Counter: 143 - 281}*

**John MacMaster** spoke about the difference between the sentence and the judgment. He explained that the sentence is a part of the judgment. He stated the idea of a form which a judge would use is a good idea but that the judiciary cannot be dictated to.

*{Tape: 2; Side: B; Approx. Time Counter: 282 - 336}*

**Closing by Sponsor:**

**CHAIRMAN SHOCKLEY** closed on HB 240 stating that the idea is to give sheriffs control of the jail. The sheriff cannot influence the sentence. The purpose is simply to make the sheriff's job easier. He said that Mr. Lambert's form is complex and could possibly be changed if needed.

*{Tape: 2; Side: B; Approx. Time Counter: 337 - 356}*

**CHAIRMAN SHOCKLEY** said that it was agreed they will not take executive action on this bill until next week.

**EXECUTIVE ACTION ON HB 220**

The amendments were explained by Mr. MacMaster, but it was determined that there was a miscommunication; that they were still not complete. No executive action was taken on this bill on this day; it was moved to another day.

*{Tape: 2; Side: B; Approx. Time Counter: 357 - 432}*

**EXECUTIVE ACTION ON HB 234**

**Motion:** **REP. GALLUS** moved that **HB 234 DO PASS.**

**Motion:** **REP. GALLUS** moved that **HB 234 BE AMENDED.**

**Discussion:**

**REP. CLARK** explained the amendment language with regard to wearing seat belts. Anyone in the vehicle not wearing seatbelts could be charged if the vehicle was pulled over. The amendment clarifies that the driver can only be cited if the person not buckled is under the age of 18.

**REP. NOENNIG** disagreed with the amendment as drafted he felt it conflicted with the bill's intent. He stated that the intention of the bill was that anyone under 18, without a seatbelt, gives cause to be stopped, and the driver can then be charged. He stated the amendment would allow anyone under 18 including a driver, not buckled up, to be cited.

***{Tape: 3; Side: A; Approx. Time Counter: 1 - 148}***

**REP. NEWMAN** stated that in order to stop a car, you need a particular suspicion; to arrest or charge, you need a reasonable cause.

***{Tape: 3; Side: A; Approx. Time Counter: 149 - 207}***

**REP. LASZLOFFY** asked about the situation where the officer has reasonable suspicion and pulls the car over. All of the minors in the car are buckled but the driver is not. Can the driver be cited for not wearing the seatbelt. **REP. NEWMAN** responded that if there is particular suspicion to stop the vehicle, the officer can arrest and cite them with reasonable cause.

***{Tape: 3; Side: A; Approx. Time Counter: 208 - 229}***

**REP. LANGE** said that the amendment and the bill are flawed. He thinks they should both be withdrawn.

**REP. CLARK** move to withdraw amendment called question on bill.

**REP. RASER** said it is a good bill and protects kids from obvious danger. She is in support.

***{Tape: 3; Side: A; Approx. Time Counter: 208 - 266}***

**Motion:** **REP. GALLUS** moved that HB 234 BE AMENDED.

**Discussion:**

**REP. LASZLOFFY** said he understands the reason for the amendment but he looks at legislation like this in the hands of bad cops not good cops. He said this creates cause to allow bad cops to go "fishing." This changes a secondary violation to a primary violation.

**REP. RASER** said she agrees with the laws being enforced and cops should pull over offenders.

***{Tape: 3; Side: A; Approx. Time Counter: 267 - 333}***

**CHAIRMAN SHOCKLEY** paraphrased Lyndon B. Johnson saying that the test of a good laws versus a bad law is not whether it's administered by a competent, well-meaning person, but what it would be like if administered by an incompetent or mean person. He felt that this was REP. LASZLOFFY'S point.

***{Tape: 3; Side: A; Approx. Time Counter: 334 - 343}***

**REP. NOENNIG** pointed out that it's illegal to drive without a seatbelt already. He said they need to go all the way or not deal with it at all. In his opinion, this is a half-way approach.

**Vote:** Motion to amend carried 10-8 with REPS. LASZLOFFY, SALES, LANGE, RICE, MALCOLM, STOKER, EVERETT, and CHAIRMAN SHOCKLEY voting no by roll call vote.

**Motion:** REP. GALLUS moved that HB 234 DO PASS AS AMENDED.

**Discussion:**

**REP. LASZLOFFY** quoted Senator Kennedy stating that "this body should not be above protecting people from themselves." The question isn't how many people they can save, but what their responsibility is in the legislature. They took an oath not to protect people from themselves, but to protect them from harming others. **REP. RASER** said that this bill is not protecting the person from themselves, but the innocent people in the car who are charged with protecting their children. She said it is her responsibility to ensure that all children in her car are belted.

***{Tape: 3; Side: A; Approx. Time Counter: 344 - 493}***

**REP. HARRIS** said this is not a situation where they are protecting the person and the victim bears the cost, but the taxpayers end up bearing the cost. He urged it do pass.

**REP. SALES** stated that this bill micro-manages our lives; you can't legislate common sense and he opposes the bill.

***{Tape: 3; Side: B; Approx. Time Counter: 1 - 10}***

**Vote:** Motion carried 10-8 with REPS. LASZLOFFY, SALES, LANGE, RICE, MALCOLM, STOKER, EVERETT, and CHAIRMAN SHOCKLEY voting no by roll call vote.

***{Tape: 3; Side: B; Approx. Time Counter: 11 - 23}***

**REP. PARKER** took a point of personal privilege to suggest that if there are amendments prepared, they could be delivered early so the Committee could look over them. It was decided that they try it for a week; Mr. MacMaster will distribute the amendments and the Representatives will put them in their file; if a Representative doesn't want it distributed, Mr. MacMaster will keep it confidential.

*{Tape: 3; Side: B; Approx. Time Counter: 24 - 90}*

**EXECUTIVE ACTION ON HB 134**

**Motion:** **REP. CLARK** moved that **HB 134 DO PASS.**

**Motion:** **REP. SHOCKLEY** moved that **HB 134 BE AMENDED.**

*{Tape: 3; Side: B; Approx. Time Counter: 92 - 154}*

**Discussion:**

**CHAIRMAN SHOCKLEY** distributed an amendment and Mr. MacMaster explained it. He explained that there are different types of accounts for the inmates. One is an account where the inmate puts his/her own money in, and the other is an account that certain other sources put money in for the use of the inmates. As it stands, the warden has to consult with the inmates. The amendment will make it so the warden only has to get the consent of an inmate council.

**EXHIBIT(juh13a01)**

**REP. LASZLOFFY** asked if the council is the inmate's attorney.

**REP. RICE** asked if this removes the Warden's veto power.

**CHAIRMAN SHOCKLEY** said that without the amendment, if the inmate council proposed buying baseballs, the warden could not veto it if he felt they need golf balls instead. He explained that both parties have to agree on the expenditures. **Ms. Koch** said the DOC does not object to this amendment.

*{Tape: 3; Side: B; Approx. Time Counter: 155 - 181}*

**REP. NOENNIG** voiced concerns that the money really doesn't belong to the inmates, but it is used for them. He was confused with conflicting input from the DOC. **REP. SHOCKLEY** said he gave the DOC a chance to speak out and they are in favor.

*{Tape: 3; Side: B; Approx. Time Counter: 182 - 205}*

**REP. GALLUS** asked Joe Williams, if the DOC acquiesced because it is good policy or for another reason. **Mr. Williams** said he would have a problem with inmates having veto power. He explained that the warden needs to have control over the institution. He said he would have to side the with absolute authority staying with the warden.

**REP. GALLUS** also stated that he opposed the amendment and that the warden should have the veto and decision-making authority.

*{Tape: 3; Side: B; Approx. Time Counter: 206 - 257}*

**REP. NEWMAN** opposed the amendment as well. He said that this money was not inmates' personal money, but for the benefit of the inmates. He was concerned with the language and stated that if they say "may with concurrence of inmate council" it will be interpreted by the supreme court to mean "must" and that creates an inmate veto power. He believed that is bad policy.

*{Tape: 3; Side: B; Approx. Time Counter: 258 - 277}*

**CHAIRMAN SHOCKLEY** said that this is a fairness issue. It is their money; they earn it. They conceive of it as their money. He stressed that it is not the taxpayers', or the warden's, money. If the warden wants to do something with their money, the inmates should have a say in how their money will be spent. He told of his experience when working on a ship; the crew's money goes into the mess and the captain eats what the crew wants. He posed that Warden Mahoney is analogous to the captain of the prison, and the inmates should have a say on how the money is spent.

*{Tape: 3; Side: B; Approx. Time Counter: 278 - 313}*

**REP. NOENNIG** stated that the money is not really the inmates' money. He said it ought to be up to the warden to decide how money is spent.

*{Tape: 3; Side: B; Approx. Time Counter: 314 - 331}*

**Ms. Koch** explained that she had misread the amendment as not giving the inmates a veto power. She said this gives inmates a veto and they do not wish them to have a veto. She agreed that the DOC should consult with the inmates about how the money is spent. She stressed that this is a symbolic suggestion that would have great repercussions with the inmate population. She said they oppose the amendment.

*{Tape: 3; Side: B; Approx. Time Counter: 331 - 418}*



**CHAIRMAN SHOCKLEY** spoke about the misuse of money in Shelby. **Ms. Koch** explained that in regard to Shelby, they built a nice indoor recreation center. The idea was that if there were fences around an area, the inmates could have an outdoor recreation yard. They posed the question to the inmates who agreed it was a good idea. The bills says that money won't be spent on something the DOC is mandated to provide.

**REP. HARRIS** said passing this amendment will create a mess, but he will vote for it anyway.

**Vote: Motion to amend failed 2-16 with REP. HARRIS and CHAIRMAN SHOCKLEY voting aye by roll call vote.**

**Vote: Motion DO PASS HB 134 carried 18-0 by a voice vote.**

**ADJOURNMENT**

Adjournment: 10:57 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh13aad)